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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION**

UNITED STATES OF AMERICA

Case No.: 3:16-CR-00051-BR-4

vs.

RYAN W. PAYNE,

**DEFENDANT'S NOTICE RE:
MOTION TO WITHDRAW GUILTY
PLEA AND PROCEED TO TRIAL BY
JURY**

Defendant.

Defendant Ryan W. Payne, through his attorneys, Lisa Hay and Rich Federico, respectfully submits the following notice relating to a change in material facts and circumstances regarding his Motion to Withdraw Plea of Guilty (ECF, Doc. 1421, “Motion” herein). The change is that Mr. Payne is no longer set to proceed to trial in the District of Nevada in February 2017 (*United States v. Cliven Bundy, et.al.*, 3:16-cr-00046-GAN-PAL), as previously thought and briefed by the

parties. For the reasons stated herein, the change in the Nevada trial date may alter the Court's analysis regarding Mr. Payne's pending motion to withdraw his guilty plea.

As the Court is aware, Mr. Payne filed his Motion on October 12, 2016, prior to the conclusion of the first trial of co-defendants. In a Response filed on November 7, 2016, the government argued that "to permit a withdrawal at this point would also prejudice the government and the administration of justice," because "[a]nother group is set for trial in this Court in February of 2017, but that date conflicts with Payne's currently scheduled trial date in Nevada." (Doc. 1544 at 6.) The government further stated, "[p]ermitting withdrawal at this late date will likely require that Payne be tried alone, sometime after his Nevada case, and without the efficiencies enjoyed through joinder with his co-defendants." (Doc. 1544 at 6-7.)

On December 13, 2016, the Nevada Court resolved several motions for severance and issued a ruling (**Attachment A** – Nevada Docket, Doc. 1108) that severed the co-defendants in tiers and scheduled their trial dates, as follows:

1. The trial of the 17 defendants awaiting trial shall be severed into three groups for three separate trials consisting of:
 - a. Tier 1: Cliven Bundy, Ryan Bundy, Ammon Bundy, Peter Santilli, and Ryan Payne;
 - b. Tier 2: Dave Bundy, Mel Bundy, Joseph OShaughnessy, Brian Cavalier, Jason Woods, and Micah McGuire; and
 - c. Tier 3: Richard Lovelien, Todd Engel, Gregory Burleson, Eric Parker, O. Scott Drexler, and Steven Stewart.
2. The Tier 3 defendants will proceed to trial February 6, 2017.

3. The Tier 1 defendants will proceed to trial 30 days after the conclusion of the trial of the Tier 3 defendants.

4. The Tier 2 defendants will proceed to trial 30 days after the conclusion of the trial of the Tier 1 defendants.

Again, based upon this Order from the Nevada Court, Mr. Payne will not proceed to trial in Nevada until 30 days after the conclusion of the “Tier 1” defendants, which is set to begin on February 6, 2017. If the Court permits Mr. Payne to withdraw his guilty plea, as he requests, he may be available to be tried in Oregon beginning February 14, 2017.¹

Finally, Mr. Payne again asserts that if the Court determines a hearing is necessary to resolve his pending Motion, he does not waive his right to be present at any such hearing. (Reply, Doc. 1569 at 1.)

Respectfully submitted this 14th day of December, 2016.



Rich Federico
Assistant Federal Public Defender

¹ Mr. Payne is mindful that on December 12, 2016, the government filed a motion for a 60-day continuance of the trial (Doc. 1615), which remains pending before the Court. If granted, the continuance would likely create a scheduling conflict with the Nevada case, such that Mr. Payne could not be present in both Districts at the same time.